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Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 876

ALBERT BEHRENS,

Petitioner,

vs.

TOM SMITH, SUPERINTENDENT, WASHINGTON STATE
PENITENTIARY

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WASHING-
TON.**

HOWARD E. FOSTER,
Counsel for Petitioner.

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Now comes the petitioner, Albert Behrens, and represents to the Court, and advises the Court, as follows: That the petitioner seeks a writ of certiorari to review the judgment of the Supreme Court of the State of Washington, dated November 15th, 1945 (R. 12-19), which affirmed a judgment of the Superior Court of the State of Washington for Pierce County in said State dated April 27, 1945 (R. 11), denying the petitioner's release from the Washington State Penitentiary on a writ of *habeas corpus* (R. 11). On appeal from the decision of the nisi court, the Supreme Court filed an opinion on November 15, 1945, affirming the judgment of the nisi court denying the petition for a writ of *habeas corpus* (R. 12-19). The judgment of the Supreme Court has not been reported but the same

is in the record, and can be found in Vol. 124, No. 3, Page 118 of the advanced sheets of the said court of last resort of said State.

Jurisdiction of the Supreme Court

This Court has jurisdiction to review the Judgment of the Supreme Court of the State of Washington, under favor of Sec. 240(a) of the Judicial Code and the Rules of Practice and Procedure as promulgated by this Court.

Summary and Short Statement of the Matters Involved and Reasons Relied On

On January 26, 1938, the Prosecuting Attorney for King County, Washington, filed in the Superior Court of that County, an information charging the petitioner with the crime of carnal knowledge committed on or about January 24, 1937 (R. 5). On May 18, 1938, petitioner was convicted, it seems, by a jury, and on June 11, 1938, a judgment of sentence was entered pursuant to the verdict of the jury, and an *amended* information, which was never filed in the cause, and ordered the petitioner confined in the Washington State Penitentiary for a term not more than life on count one of the information that was never filed, and for twenty years on count II of the said unfiled information (R. 7-10). The minimum sentence on count one was to be fixed by the Parole Board (R. 7). The information was supposed to be filed under favor of Sec. 2436 of the Statutes of Washington, and the sentence attempted to be imposed under favor of such Section as amended. At the time of the sentencing there was no Parole Board in the State of Washington. It is contended that the entire proceedings of the nisi court were irregular and void. There was no such crime as carnal knowledge; the information contained only one count; the judgment of sentence

is void; the same is *ex-post facto* and void, and the petitioner unlawfully confined in prison. That the amended statute, 2436, did not go into effect until June 10, 1937.

Specification of Errors

1. The Supreme Court of Washington erred in affirming the judgment of the trial court, and erred in denying petitioner's prayer for release on *habeas corpus*, and in holding the nisi court had jurisdiction of the person of the petitioner and authority to enter the judgment herein complained of. That a judgment could be entered in a criminal case in the absence of an information, and when the judgment recites the same was entered upon an amended information that never was filed of record in the trial court, and was not contended otherwise in the return to the application for release.

2. The Supreme Court of Washington State erred in holding an *ex-post facto* sentence can be upheld in affirming the judgment of the nisi court, and in not reversing the judgment of the trial court and ordering the release of the petitioner, and in not finding that petitioner's motion for judgment in the trial court should have been sustained.

Reasons Relied On for Granting Certiorari

1. The record shows petitioner was sentenced to prison on three counts deraigned in an amended information that was never filed, or in respects made a matter of record (R. 5-10). The imprisonment ordered on counts II and III of the amended information which was never filed was held to be invalid (R. 19-20). The imprisonment on count one was sustained in the nisi court and the judgment so holding was affirmed in the court of last resort (R. 12-19). The judgment on count one is in all respects invalid, and punishment inflicted is *ex-post facto*.

2. The judgment of the Supreme Court of the State of Washington affirming the judgment of the nisi prius court deprives petitioner of his rights of due process of law under the Constitution of the United States, the Fourteenth Amendment, and the provisions of the Constitution of the State of Washington.

ALBERT BEHRENS,

Petitioner,

By HOWARD E. FOSTER,

Attorney for Petitioner.

